

Message Text

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ORIGIN EB-08

INFO OCT-01 ARA-10 ISO-00 TRSE-00 CAB-02 CIAE-00
COME-00 DODE-00 DOTE-00 INR-10 NSAE-00 FAA-00
L-03 SS-15 NSC-05 /054 R

DRAFTED BY EB/OA/AVP:GGGRIFFITHS:JG
APPROVED BY EB/OA:MHSTYLES
EB/OA/AVP:AJWHITE
TREASURY:DROSENBLOOM
ARA/ECP:DTAHER
ARA/AND/V:WSERGEANT

-----110172 232225Z /65

P 231938Z MAR 78
FM SECSTATE WASHDC
TO AMEMBASSY CARACAS PRIORITY

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E.O. 11652: N/A

TAGS: EAIR, VE

SUBJECT: CIVAIR: MEETING ON PROPOSED TAX AGREEMENT

REF: STATE 300304 OF 12/16/77

1. SUMMARY: MEETING HELD MARCH 2 TO DISCUSS POSSIBLE
TAX AGREEMENT WAS CONDUCTED IN FRIENDLY, INFORMAL
ATMOSPHERE AND RESULTED IN FULL EXPLORATION OF PROBLEM OF
COVERING SUPPLEMENTALS IN PROPOSED AGREEMENT. US SIDE
PROPOSED SEVERAL POSSIBLE WAYS TO PHRASE WORDING OF AGREE-
MENT WHICH SEEMED TO BE RESPONSIVE TO TIRADO'S CONCERNS
AND YET WOULD STILL BE CONSISTENT WITH US STATUTORY
REQUIREMENTS. TIRADO, WHILE SHOWING LITTLE FLEXIBILITY AT
THE MEETING, PROMISED TO CONSIDER THE MATTER FURTHER IN
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CARACAS. END SUMMARY.

2. MEETING AT TREASURY ON MARCH 2 ATTENDED ON
VENEZUELAN SIDE BY TIRADO, VIASA REP, AND EMBASSY REP. US
MEMBERS WERE DAVID ROSENBLOOM, INTERNATIONAL TAX COUNSEL,
A,D JOHN RAEDEL, DEPUTY INTERNATIONAL TAX COUNSEL, OF THE
TREASURY DEPARTMENT,

CAROLYN COLDREN OF CAB, AND GENE GRIFFITHS OF THE OFFICE
OF AVIATION AT THE STATE DEPARTMENT. MEETING WAS

CONDUCTED IN SPANISH, WITH COLDREN WHO SPEAKS FLUENT SPANISH, DOING THE TRANSLATING.

3. BOTH SIDES ACKNOWLEDGED THAT THE ONLY REMAINING SUBSTANTIVE PROBLEM CONCERNED COVERAGE OF US SUPPLEMENTALS BY THIS AGREEMENT. TIRADO BEGAN BY CITING VENEZUELAN LEGAL REQUIREMENTS WHICH STIPULATE THAT SUCH AGREEMENTS PROVIDE FOR STRICT RECIPROCITY OF SIMILAR VENEZUELAN COMPANIES, WITH THE BENEFITS BEING EQUIVALENT, ALMOST IN A DOLLAR FOR DOLLAR SENSE. HE CONCEDED THAT STRICT RECIPROCITY IN THE QUANTITATIVE SENSE WAS DIFFICULT TO OBTAIN IN THIS TYPE OF SITUATION, AND IT WOULD NOT BE A STICKING POINT AS FAR AS GOV CONCERNED. HOWEVER, HE EMPHASIZED THAT THE REQUIREMENT OF RECIPROCITY FOR SIMILAR COMPANIES WOULD HAVE TO BE OBSERVED, AND FOR GOV THIS MEANT COMPANIES OPERATING REGULARLY TO VENEZUELA, I.E. SCHEDULED, BUT NOT THE SUPPLEMENTAL AIRLINES. HE FURTHER INDICATED THAT THE SUPPLEMENTALS DO NOT NOW PAY TAXES ANYWAY IN VENEZUELA. ACCORDING TO TIRADO, SUPPLEMENTALS PAY APPROPRIATE LANDING FEES, ETC. PURSUANT TO OPERATING EACH FLIGHT, BUT THEIR INCOME IS NOT BEING TAXED BY GOV.

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3.ROSENBLOOM RESPONDED BY CITING US STATUTORY REQUIREMENT WHICH MADE IT IMPOSSIBLE FOR USG TO NEGOTIATE EXEMPTION FOR SOME BUT NOT ALL US CITIZENS AND CORPORATIONS. ROSENBLOOM THEN MADE POINT THAT US NONSCHEDULED CHARTER TRAFFIC TO VENEZUELA WAS SO SMALL THAT INCLUDING SUPPLEMENTLS IN AGREEMENT WOULD BE OF NO PRACTICAL SIGNIFICANCE. CAB SUPPLIED FIGURES SHOWED THAT IN 1977, US SUPPLEMENTAL CARRIERS CARRIED ONLY .6 PERCENT OF THE TOTAL PASSENGER MARKET, AND 1.6 PERCENT OF THE TOTAL CARGO MARKET.

4. TIRADO VOICED CONCERN THAT WHILE LEVEL OF US CHARTER ACTIVITY CURRENTLY LOW, IT COULD INCREASE IN THE FUTURE. US SIDE RESPONDED BY CITING THE PROTECTION AFFORDED GOV BY THE SIX MONTHS TERMINATION CLAUSE IN THE PROPOSED DRAFT AGREEMENT- ADDITIONALLY, US SIDE POINTED TO FACT THAT GOV HAD DIRECT CONTROL OF LEVEL OF CHARTER ACTIVITY. DUE TO LACK OF CHARTER AGREEMENT BETWEEN US AND VENEZUELA, US CHARTER FLIGHTS HAVE TO RECEIVE PRIOR APPROVAL OF GOV. WE EMPHASIZED WE WERE NOT ADVOCATING GOV FOLLOW RESTRICTIVE POLICY ON CHARTER (GOV SEEMS TO NEED NO URGING ON THIS POINT). HOWEVER, IT SEEMED THAT

GOV HAD ADEQUATE MEANS OF ENSURING THAT LEVEL OF CHARTER ACTIVITY DID NOT REACH, WHAT WAS TO GOV, UNACCEPT- ABLE LIMITS DUE TO THEIR CONTROL OVER CHARTER FLIGHTS VIA

PRIOR APPROVAL, AND THROUGH THEIR ABILITY TO TERMINATE
THE AGREEMENT ON SIX MONTHS ADVANCE NOTICE.

5. IN ADDITION, US SIDE POINTED TO FACT THAT VENEZUELAN
CARRIER CHARTER TRAFFIC TO US HANDLED BY VIASA, WHEREAS
US CARRIER CHARTER TRAFFIC HANDLED BY BOTH SCHEDULED AND
SUPPLEMENTAL AIRLINES. AN AGREEMENT WHICH EXEMPTED
INCOME OF ONLY SCHEDULED SERVICES WOULD COVER VIASA CHARTER
INCOME ALSO, WHEREAS THAT PART OF US CHARTER INCOME WHICH
REPRESENTED SUPPLEMENTALS INCOME WOULD NOT BE COVERED.
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6. TIRADO REITERATED DIFFICULTY THAT GOV WOULD HAVE IN
EXTENDING AGREEMENT TO COMPANIES NOT OPERATING REGULARLY
TO VENEZUELA. BASED ON TIRADO'S STATEMENT THAT
SUPPLEMENTALS' INCOME NOT NOW BEING TAXED BY GOV, US SIDE
PROPOSED REVISED WORDING OF AGREEMENT WHICH WAS IMAGINA-
TIVE RESPONSE TO GOV CONCERNS. US PROPOSAL WAS TO
SUBSTITUTE FOLLOWING 2 ARTICLES FOR ARTICLE 1 OF
DRAFT PROPOSED IN REFTEL: QUOTE. ARTICLE 1. VENEZUELA
SHALL EXEMPT FROM INCOME TAX AND EXCLUDE FROM GROSS
INCOME ALL EARNINGS DERIVED BY A CORPORATION ORGANIZED IN
THE UNITED STATES, OR BY AN INDIVIDUAL WHO IS A CITIZEN
OF THE UNITED STATES AND A NONRESIDENT ALIEN AS TO
VENEZUELA, FROM THE OPERATION OF AIRCRAFT REGISTERED UNDER
THE LAWS OF THE UNITED STATES, INCLUDING INCOME FROM THE
INCIDENTAL LEASE OF AIRCRAFT OR CONTAINERS. THIS
EXEMPTION SHALL APPLY TO UNITED STATES CORPORATIONS AND
CITIZENS WHICH, EITHER NOW OR IN THE FUTURE, OPERATE A
REGULAR SERVICE TO AN AIRPORT SITUATED IN VENEZUELA. THIS

LONG AS THE UNITED STATES EXEMPTION UNDER PARAGRAPH 2
REMAINS IN EFFECT.

ARTICLE 2. THE UNITED STATES SHALL EXEMPT
FROM INCOME TAX AND EXCLUDE FROM GROSS INCOME ALL
EARNINGS DERIVED BY A CORPORATION ORGANIZED IN VENEZUELA,
OR BY AN INDIVIDUAL WHO IS A CITIZEN OF VENEZUELA AND A
NONRESIDENT ALIEN AS TO THE UNITED STATES, FROM THE
OPERATION OF AIRCRAFT REGISTERED UNDER THE LAWS OF
VENEZUELA, INCLUDING INCOME FROM THE INCIDENTAL LEASE OF
AIRCRAFT OR CONTAINERS. IN ACCORDANCE WITH SECTIONS
872(B) AND 883(A) OF THE INTERNAL REVENUE CODE OF 1954,
THIS EXEMPTION SHALL APPLY ONLY SO LONG AS VENEZUELA
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GRANTS AN EQUIVALENT EXEMPTION TO UNITED STATES CORPORA-
TIONS, AND TO UNITED STATES CITIZENS WHO ARE NON-

RESIDENTS AS TO VENEZUELA, EITHER PURSUANT TO PARAGRAPH 1 OF THIS NOTE OR, WITH RESPECT TO UNITED STATES CORPORATIONS AND CITIZENS NOT COVERED BY PARAGRAPH 1, IN FACT. END QUOTE.

7.A CAREFUL READING OF THESE TWO ARTICLES INDICATES THAT GOV IS COMMITTED IN ARTICLE 1 ONLY TO EXEMPT US CORPORATIONS AND PERSONS OPERATING REGULAR SERVICE TO VENEZUELA. USG COMMITMENT IN ARTICLE 2 IS TO GRANT AN EQUIVALENT EXEMPTION TO VENEZUELAN AIRLINES AS LONG AS US AIRLINES ARE EXEMPTED UNDER ARTICLE 1, AND US AIRLINES NOT COVERED BY ARTICLE 1 ARE EXEMPTED IN FACT. IN OTHER WORDS, USG EXEMPTION OF VENEZUELAN AIRLINES WOULD BE CONTINGENT UPON CONTINUATION OF STATUS QUO. AS LONG AS GOV WILLING, IN FACT, TO EXEMPT SUPPLEMENTALS' INCOME, EXEMPTION OF SCHEDULED AIRLINES' INCOME WOULD CONTINUE. IF GOV BEGAN TO TAX SUPPLEMENTALS' INCOME, AN ACTION THIS AGREEMENT WOULD NOT PROHIBIT, THEN THE US EXEMPTION FOR VENEZUELAN AIRLINES WOULD CEASE. IN TURN, THE VENEZUELAN EXEMPTION FOR US SCHEDULED AIRLINES WOULD CEASE AND THE SITUATION WOULD BE NO WORSE THAN WHAT EXISTS TODAY. US SIDE CONSIDERED THIS PROPOSAL TO BE RESPONSIVE TO GOV CONCERNS ABOUT EXEMPTING ONLY SCHEDULED AIRLINES, AND TO USG CONCERNS ABOUT NOT DISCRIMINATING AMONG US AIRLINES.

8. WHILE MEETING CONTINUED FOR SOME TIME, ONLY ADDITIONAL ITEM OF SUBSTANCE WAS US IDEA FLOATED AT END OF MEETING WHEN IT BECAME CLEAR THAT TIRADO NOT PREPARED TO MOVE ON THIS ISSUE, THAT PERHAPS GOV MIGHT BE ABLE TO ACCEPT SUCH AN AIRLINE AGREEMENT IF IT WERE FOLDED INTO AN OVERALL AGREEMENT WHICH COVERED SHIPPING AS WELL. IDEA WAS LEFT AS SOMETHING TIRADO WOULD EXPLORE UPON HIS RETURN TO LIMITED OFFICIAL USE
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CARACAS, AS WELL AS, MORE IMPORTANTLY, EXPLORING GOV REACTION TO OUR SPECIFIC PROPOSAL RE AIRLINES.

9. COMMENT: US PROPOSAL IN REVISED ARTICLES 1 AND 2 REPRESENTS MAXIMUM CONCEIVABLE FLEXIBILITY USG CAN OFFER CONSISTENT WITH US STATUTORY REQUIREMENT. TIRADO WAS UNABLE, FOR WHATEVER REASON, TO RESPOND WITH SIMILAR FLEXIBILITY TO A PROPOSAL WHICH US SIDE CONSIDERED TO BE RESPONSIVE TO HIS NEEDS. THIS COULD STEM FROM A LIMITED NEGOTIATING MANDATE GIVEN TO HIM BY CARACAS. OR, IT CONCEIVABLY COULD STEM FROM GOV DESIRE NOT TO APPEAR TO

BREAK RANKS WITH MOST OF ITS SOUTH AMERICAN NEIGHBORS REGARDING THEIR DISLIKE OF SUPPLEMENTALS' OPERATIONS. TIRADO KEPT COMING BACK TO DIFFERENT FORMULATIONS WHICH WOULD EXCLUDE SUPPLEMENTALS FROM THE AGREEMENT IN FACT

AND IN THEORY. US SIDE KEPT RESPONDING WITH DIFFERENT FORMULATIONS WHICH WOULD COVER THE SUPPLEMENTALS IN FACT. IF POSITION REPRESENTED BY TIRADO IS GOV BOTTOM LINE, THEN IT APPEARS THAT AGREEMENT WILL NOT BE POSSIBLE AT THIS TIME.

10. ACTION REQUESTED: EMBASSY REQUESTED TO DISCUSS MATTER WITH TIRADO AND ASCERTAIN GOV REACTION TO USG PROPOSAL EMBODIED IN PROPOSAL ARTICLES 1 AND 2. IN DISCUSSING MATTER, EMBASSY SHOULD USE FOLLOWING AS MAIN TALKING POINTS:

LEVEL OF US SUPPLEMENTAL TRAFFIC MINISCULE IN RELATION TO MARKETS. PRACTICAL SIGNIFICANCE OF EXCLUDING SUPPLEMENTS WOULD BE NEGLIGIBLE. BESIDES, GOV ALREADY, IN FACT, EXCLUDING SUPPLEMENTALS FROM INCOME TAXATION.

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GOV HAS ADEQUATE PROTECTION THROUGH THE SIX MONTHS' TERMINATION CLAUSE IN THE AGREEMENT.

ADDITIONALLY, GOV HAS DIRECT CONTROL OVER LEVEL OF CHARTER ACTIVITY, SO CHARTER ACTIVITY CANNOT GROW TO A LEVEL UNDERSIRED BY VENEZUELA.

ARTICLE 1 REQUIRES GOV ONLY TO EXEMPT US REGULARLY SCHEDULED AIRLINES FROM INCOME TAXATION. ARTICLE 2 MAKES US EXEMPTION, AND ULTIMATELY VENEZUELAN EXEMPTION, CONTINGENT UPON GOV CONTINUING CURRENT TAX TREATMENT OF US SUPPLEMENTALS. PROPOSED AGREEMENT WOULD REQUIRE GOV TO DO NOTHING IT IS NOT PREPARED TO DO FOR SCHEDULED AIRLINES IN THEORY, OR IS IN FACT DOING FOR SUPPLEMENTAL AIRLINES NOW.

IF TIRADO CITES VENEZUELAN STATUTORY CONSTRAINTS, EMBASSY REQUESTED TO EXPLORE THIS POINT IN SOME DETAIL AND REPORT ITS EVALUATION OF NATURE OF CONSTRAINT THIS PUTS ON GOV.

ALSO, DEPT. WOULD BE APPRECIATIVE OF ANY EMBASSY OBSERVATIONS REGARDING DEPT. COMMENT IN PARA 9 ABOVE RE IMPORTANCE GOV ATTACHES TO ITS NEIGHBORS' VIEWS ON SUPPLEMENTALS. VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 26 sep 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MEETING REPORTS, TAX AGREEMENTS, AVIATION AGREEMENTS, NEGOTIATIONS, SUPPLEMENTAL AIRLINES
Control Number: n/a
Copy: SINGLE
Draft Date: 23 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE075312
Document Source: ADS
Document Unique ID: 00
Drafter: EB/OA/AVP:GGGRIFFITHS:JG
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Expiration:
Film Number: D780129-0208
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197803126/baaafcee.tel
Line Count: 267
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Message ID: 946c5ebb-c288-dd11-92da-001cc4696bcc
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: STATE 300304 OF 12/16/77
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3166843
Secure: OPEN
Status: NATIVE
Subject: CIVAIR: MEETING ON PROPOSED TAX AGREEMENT
TAGS: EAIR, VE, US
To: CARACAS
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/946c5ebb-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014